

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IVAN G. McKINNEY,

Plaintiff,

v.

PROSECUTOR'S OFFICE, et al.,

Defendants.

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Civ. No. 13-2553 (KM) (MCA)

ORDER No. 2 [SEVERANCE]

NOTICE TO PLAINTIFF: This order calls for a response from you (see paragraph 5, below). Unless it is received within 30 days, your claims may be dismissed.

For the reasons expressed in the Opinion and Order No. 1 (screening) filed herewith,

IT IS this 4th day of June, 2014

ORDERED as follows:

1. This case shall be severed into three separate actions.
2. **Action No. 1.**
 - a. The first action, Civ. No. 13-2553, shall comprise all claims and defendants under Categories A and B in the accompanying Opinion, consisting of Complaint ¶¶ 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 16, 17, 18, 19, 20, 24, and 30.
 - b. The defendants in this, the above captioned Action No. 1, are the following:

Det. James Harris
Lt. Edward Russo
Officer Peter Crisculo
Det. Sgt. Mike Antista
Det. Martin

Chief John Doe (Hackensack Police)
Chief John Doe (Bergen County Prosecutor's Office)
Det. Robert Carucci
Det. John Dalton
John Doe Assistant Superintendent of Clifton Schools
David Calviello – Assistant Prosecutor, Bergen County
John Higgins – First Assistant Prosecutor, Bergen County
John Molinelli, Bergen County Prosecutor
Teresa Duenas – Mother of K.M.
George Santiago – Det. Bergen County Prosecutor's Office
Daniel Andriulli – Computer Forensics, Bergen County Prosecutor
Maria Zambrano – Mother of K.M.
Honorable Judge James Guida – Bergen County Superior Court

- c. Pursuant to the accompanying Opinion and Order No.1 [screening], all of the claims and defendants in this, the above captioned Action No. 1, have been dismissed.
- d. The Clerk shall therefore mark this, Civ. No. 13-2553, CLOSED.

3. Action No. 2.

- a. The clerk shall open a second action, "Action No. 2," under a new docket number. Action No. 2 shall comprise all claims and defendants under Category C in the accompanying Opinion, consisting of Complaint ¶¶ 21, 22, 23. The Clerk shall docket the complaint, the opinion and this order in that new action.
- b. The docket in Action No. 2 shall name as defendants *only* the following:

John Doe Superintendent – South Woods State Prison
John Doe Doctor – South Woods State Prison
Jane Doe Nurse Practitioner – South Woods State Prison

4. Action No. 3.

- a. The clerk shall open a third action, "Action No. 3," under a new docket number. Action No. 3 shall comprise all claims and defendants under Category D in the accompanying Opinion, consisting of Complaint ¶¶ 7,

12, 13, 14, 15, 27, 25, 26, 28 and 29. The Clerk shall docket the complaint, the opinion and this order in that new action.

- b. The docket in Action No. 3 shall name as defendants *only* the following:

Dr. Hemsley – Bergen County Jail Medical Department
Bergen County Jail
Capt. Pawson – Bergen County Jail in charge of medical
Lt. Pickel – Bergen County Jail in charge of grievances
Warden Bigott – Warden Bergen County Jail
Capt. Davies – Bergen County Jail
Kurk Leenig – Supervisor, Mailroom Bergen County Jail
Officer John Doe in mail room of the Bergen County Jail
Lt. Acacios – Bergen County Jail
Aramark Foods – Bergen County Jail

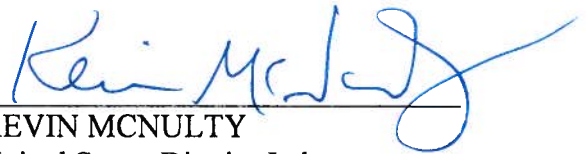
- c. Pursuant to the accompanying Opinion and Order No.1 [screening], four of these claims (Complaint ¶¶ 25, 26, 28 and 29, asserted against Bergen County Jail, Leenig, Acacios and Aramark) have been dismissed.

AND IT IS FINALLY ORDERED, as follows:

5. **Within 30 days, the plaintiff, Ivan G. McKinney, shall file a short statement or letter stating whether he wishes to proceed with the newly-filed Action No. 2 and Action No. 3. If no response is received, these cases shall be dismissed without prejudice for failure to prosecute.**
6. If a positive response is received, pursuant to 28 U.S.C. § 1915(a), and the filing fee is not tendered, Plaintiff's application to proceed *in forma pauperis* shall be deemed granted based on my order granting *in forma pauperis* status in the original, unsevered case, Civ. No. 13-2553. The Clerk shall then deem the complaint to be properly filed without prepayment of the filing fee.

7. Plaintiff is advised that Action No. 2 and Action No. 3 will each require payment of a separate filing fee. If he elects to go forward and is granted *in forma pauperis* status pursuant to paragraph 6, he shall be assessed a filing fee of \$350.00 in each case. I will be required to enter an order that it be deducted from his prison account in instalments, pursuant to 28 U.S.C. § 1915(b)(2), regardless of the outcome of the litigation.
8. If plaintiff elects to go forward with Action No. 2, No. 3, or both, I will enter a separate order directing the defendants to answer the claims that were not dismissed at the screening stage.

THE CLERK shall supply to Plaintiff by regular U.S. Mail: (1) a copy of this Order; (2) a copy of the accompanying Opinion and Order No. 1 (screening); (3) a copy of the docket sheet in this action; and (4) a copy of the docket sheets in the newly created Action No. 2 and Action No. 3.


KEVIN MCNULTY
United States District Judge